



A Masco Company

THE P. KEVIN JAFFÉ FACILITY

3400 W. Segerstrom Avenue

Santa Ana, CA 92704

Phone 714-545-7101

Fax 714-241-1002

www.behrpaint.com

SFUND RECORDS CTR

2300090

April 3, 2002

Steven Arbaugh

Civil Investigator, SFD-7-B

U.S. Environmental Protection Agency, Region IX

75 Hawthorne Street

San Francisco, CA 94105

Re: March 19, 2002 Correspondence
Request for Information - Tucson International Airport Area Superfund
Site, Tucson, Arizona

Dear Mr. Arbaugh:

We are in receipt of the above referenced correspondence addressed to Chuck Dowd (copy enclosed). Standard Brands Paint Company ceased doing business in August, 1996. Please be advised that Behr Process Corporation purchased certain trademarks from the Standard Brands Liquidating Creditor Trust in accordance with the Trademark Purchase and Assignment Agreement dated as of June 24, 1998 (copy enclosed).

If you have additional questions, please do not hesitate to contact the undersigned at (714) 545-7101 ext. 2104.

Very truly yours,

JEFFREY D. FILLEY

Acting President

Enclosures

cc: Chuck Dowd

OTHO BEHR FACILITY

1603 W. Alton
Santa Ana, CA 92704

MANUFACTURING FACILITY

3400 W. Garry Street
Santa Ana, CA 92704

MANUFACTURING FACILITY

3500 W. Segerstrom Avenue
Santa Ana, CA 92704

WEST COAST DISTRIBUTION

1995 S. Standard Avenue
Santa Ana, CA 92707



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

4/1/02
Steve

Respond in
writing re -
Chap 7, brand
purchase,
historic
sales
into

Date: MAR 19 2002

CERTIFIED MAIL NO: 70012510000359446447
RETURN RECEIPT REQUESTED

Chuck Dowd
President
Standard Brands Paint Company, Inc.
21001 Van Boren Road
Taylor, MI 48180

Re: Request For Information - Tucson International Airport Area Superfund Site, Tucson, Arizona

Dear Mr. Dowd:

This letter seeks your cooperation in providing information and documents relating to the contamination of soils and groundwater in Tucson, Arizona, associated with the Tucson International Airport Area Superfund Site ("Site"). The Arizona Department of Environmental Quality ("ADEQ") and the United States Environmental Protection Agency ("EPA") are spending public funds to investigate actual and threatened releases of hazardous substances at the Site. ADEQ and EPA are conducting this investigation to determine the nature and extent of contamination in the area, to assess the effects of contamination on the environment and human health, and to identify activities and parties that contributed to the contamination. This request is for information that Standard Brands Paint Company, Inc. may have pertaining to this investigation, specifically related to one portion of the Site: West Plume B.

In the process of EPA's investigation of potential responsible parties, EPA has learned Standard Brands Paint Company, Inc. sold various types of cleaning solvents and other products to General Electric, Tucson Shop located at 1401 East Valencia, Tucson, AZ. Please provide the following information:

1. State the full name, address, and telephone number, position or positions held by and tenure of the individual(s) answering any of these questions on behalf of Standard Brands Paint Company, Inc.
2. Please identify sales of any solvents or other products containing trichloroethylene (TCE), dichloroethylene (DCE) and perchloroethylene (PCE) (also known as tetrachloroethylene) to General Electric Company, Tucson Shop during the period of time beginning January 1, 1975 through January 1, 1990. Please identify the amounts of TCE, DCE or PCE in the formulation of these products during this time period. You may furnish computer printouts or summaries of this information rather than copies of each and every sales invoice, as long as dates of sales, quantities and specific chemical composition of chemicals sold are included.

Standard Brands Paint Company, Inc.
Information Request Letter
Page 2

We encourage you to give this matter your immediate attention and request that you provide a complete and truthful response to this Information Request within thirty (30) calendar days of your receipt of this letter. Your response to this letter should be made in writing, signed by you or a duly authorized representative of Standard Brands Paint Company, Inc.

Please note that your compliance with this Information Request is mandatory. Failure to respond fully and truthfully could result in enforcement action by EPA pursuant to section 104(e)(5) of CERCLA, 42 U.S.C. section 9604(e)(5). This statutory provision, as amended, authorizes EPA to seek the imposition of penalties up to \$27,500 per day of noncompliance. Please be further advised that provision of false, fictitious or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. section 1001. The information you provide may be used by EPA in administrative, civil or criminal proceedings.

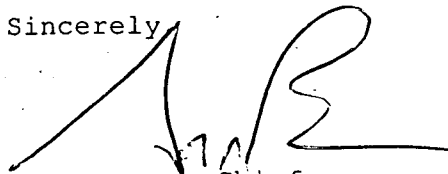
You may consider some of the information EPA is requesting to be confidential. Please be aware that you may not withhold the information on that basis. If you wish EPA to treat the information confidentially, you must advise EPA of that fact. Please provide support for your claim of confidentiality with your submittal to this Information Request.

Your response should be directed to Steven Arbaugh at the following address:

Steven Arbaugh
Civil Investigator, SFD-7-B
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

We appreciate and look forward to your response to this Information Request. If you have any questions please contact Steven Arbaugh at (415) 972-3113. Please direct any legal questions to Bethany Dreyfus at (415) 972-3886.

Sincerely

A handwritten signature in black ink, appearing to read 'Sean Hogan', is written over a horizontal line.

Sean Hogan, Chief
Private Sites/DOE Section
Superfund Division

Attorney or Party Name, Address and Telephone Number JOSEPH A. EISENBERG P.C. (SBN 52346) DAVID B. GOLUBCHIK (SBN 185520), for JEFFER, MANGELS, BUTLER & MARMARO LLP 2121 Avenue of the Stars, Tenth Fl. Los Angeles, California 90067-5010 Telephone: (310) 203-8080 Fax: (310) 203-0567		FOR COURT USE ONLY	
Co-Counsel for: <i>The Standard Brands Creditor Trust</i> UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA			
In re STANDARD BRANDS PAINT CO., a California corporation, STANDARD BRANDS PAINT COMPANY, a Delaware corporation, MAJOR PAINT COMPANY, a California corporation.		CASE NO. LA 95-43812-KM Chapter 11 [Jointly Administered, and Substantively Consolidated, with Case Nos. LA 95-43813-KM and LA 95-43814-KM]	
Debtors			
vs.		[] REFERENCE NUMBER	
Movant(s) / Plaintiff(s).		[] ADVERSARY NUMBER	
Respondents(s) / Defendants(s).			

NOTICE OF ENTRY JUDGMENT OR ORDER AND CERTIFICATE OF MAILING

TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:

- 1 You are hereby notified, pursuant to Local Bankruptcy Rule 9021-1(1)(a)(v), that a judgment or order entitled (*specify*)

**ORDER RE: EX PARTE APPLICATION FOR ENTRY OF AN ORDER PURSUANT TO SECTION 363 OF THE
BANKRUPTCY CODE AUTHORIZING SALE OF TRADEMARKS FREE AND CLEAR OF LIENS, CLAIMS AND OTHER
INTEREST, OR, IN THE ALTERNATIVE, THAT THIS COURT SHORTEN NOTICE OF THE HEARING ON THE MOTION**

was entered on (*specify date*):

2. I hereby certify that I mailed a copy of this notice and a true copy of the order or judgment of the persons and entities on the attached service list on (*specify date*).

Dated.

JON CERETTO
Clerk of the Bankruptcy Court

by: _____
Deputy Clerk

**If a judgment is by default, a copy of the judgment must be attached to this notice.*

SERVICE LIST

David Golubchik, Esq
Jeffer, Mangels, Butler & Marmaro LLP
2121 Avenue of the Stars, 10th Fl.
Los Angeles, CA 90067

1 DAVID F. HEROY (Illinois Bar No. 1199617)
2 MICHAEL YETNIKOFF (Illinois Bar No. 6198364)
3 BELL, BOYD & LLOYD
4 Three First National Plaza
5 70 West Madison Street, Suite 3300
6 Chicago, Illinois 60602
7 Telephone Number: (312) 807-4244
8 Facsimile Number: (312) 372-2098

9 JOSEPH A. EISENBERG P.C. (Bar No. 52346)
10 DAVID B. GOLUBCHIK (Bar No. 185520)
11 JEFFER, MANGELS, BUTLER & MARMARO LLP
12 2121 Avenue of the Stars, Tenth Floor
13 Los Angeles, California 90067
14 Telephone Number: (310) 203-8080
15 Facsimile Number: (310) 203-0567

16 Co-Counsel for
17 The Standard Brands Liquidating Creditor Trust

18 **UNITED STATES BANKRUPTCY COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 In re

21 STANDARD BRANDS PAINT CO.,
22 a California corporation,
23 STANDARD BRANDS PAINT COMPANY,
24 a Delaware corporation,
25 MAJOR PAINT COMPANY,
26 a California corporation,

27 Debtors.

28) Case No. LA 95-43812-KM
) Chapter 11
) (Jointly Administered and
) Substantively Consolidated with
) Case Nos. LA 95-43813-KM and
) LA 95-43814-KM)
)
) NOTICE OF MOTION FOR
) ENTRY OF ORDER PURSUANT
) TO SECTION 363 OF THE
) BANKRUPTCY CODE
) AUTHORIZING SALE OF
) TRADEMARKS FREE AND CLEAR
) OF LIENS, CLAIMS, OTHER
) INTERESTS; MEMORANDUM
) OF POINTS AND AUTHORITIES IN
) SUPPORT THEREOF; AND
) DECLARATION OF MICHAEL
) YETNIKOFF IN SUPPORT
) THEREOF
)

29) Date:
30) Time:
31) Place: Courtroom 1468
32) 255 E Temple Street
33) Los Angeles, California

1 TO: THE OFFICE OF THE UNITED STATES TRUSTEE, AND
2 ALL OTHER PARTIES ENTITLED TO RECEIVE NOTICE
3 IN THESE CASES PURSUANT TO THE COURT'S ORDER
4 OF FEBRUARY 7, 1996:

5 PLEASE TAKE NOTICE that the Standard Brands Liquidating Creditor Trust hereby
6 moves this Court for Entry of an Order Pursuant to Section 363 of the Bankruptcy Code
7 Authorizing Sale of Trademarks Free and Clear of Liens, Claims and Other Interests (the
8 "Motion"), for the following relief

9 (a) To establish procedures for notice, bidding, overbids and reimbursement of costs
10 and expenses in connection with the proposed sale of the Creditor Trust's interest in the
11 Trademarks ("Trademarks") listed on Schedule 1 1 of the Trademark Purchase and Assignment
12 Agreement, Exhibit A hereto ("Sale Agreement"), including, among others, the "Standard
13 Brands", "Decade" and "Hide-All" marks;

14 (b) To set a date for the sale of the Creditor Trust's interest in the Trademarks; and

15 (c) To approve a sale of the Trademarks to the Prospective Buyer (as defined herein),
16 or to any higher bidder at the sale, on the terms set forth in the Sale Agreement.

17 PLEASE TAKE FURTHER NOTICE that a hearing on the Motion shall be conducted
18 before the Honorable Kathleen P. March, United States Bankruptcy Judge, or such other Judge of
19 this Court as may be sitting in her stead, on July __, 1998 at ____ in Courtroom 1468 of the
20 Edward R. Roybal Federal Building and Courthouse, 255 East Temple Street, Los Angeles,
21 California.

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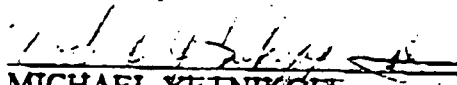
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1 **NOW PLEASE TAKE FURTHER NOTICE** that, in accordance with Local
2 Bankruptcy Rule 111(1)(g), except as otherwise provided by the Court, any response to the
3 Motion must be in writing and filed and served not later than eleven (11) days prior to the date of
4 the hearing on the Motion. The failure of any party to timely file and serve such responses may be
5 deemed by the Court to be consent to the relief requested in the Motion.
6

7 Dated. July 8, 1998

BELL, BOYD & LLOYD, and
JEFFER, MANGELS, BUTLER &
MARMARO LLP

10
11 
12 MICHAEL YETNIKOFF
13 Co-Counsel for The Standard
14 Brands Creditors Trust
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1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3
4 **I.**

5 **INTRODUCTION**

6 The Creditor Trust has moved this Court pursuant to section 363 of the United States
7 Bankruptcy Code, 11 U.S.C. §101, et seq. (the "Bankruptcy Code"), for the following relief as
8 set forth herein and in the proposed Order and Notice of Sale annexed as Exhibit B hereto.

9 (a) To establish procedures for notice, bidding, overbids and reimbursement of
10 costs and expenses in connection with the proposed sale of the Creditor Trust's interest in the
11 Trademarks, including, among others, the "Standard Brands", "Decade", and "Hide-All" marks.

12 (b) To set a date for the sale of the Creditor Trust's interest in the Trademarks;
13 and

14 (c) To approve a sale of the Trademarks to the Prospective Buyer (as defined
15 herein), or to any higher bidder at the sale, on the terms set forth in the Sale Agreement.
16

17 **II.**

18 **STATEMENT OF FACTS**

19 On December 27, 1995, the Debtors filed voluntary petitions for relief under chapter 11 of
20 the Bankruptcy Code. The Debtors ceased doing business in August, 1996. By order entered
21 November 26, 1997, the Court confirmed the Revised Joint and Consolidated Plan of Liquidation
22 of the Debtors and the Official Committee of Unsecured Creditors dated July 23, 1997, as
23 Modified (the "Plan").
24

25 Pursuant to the Plan, (a) the Creditor Trust was created by the Standard Brands
26 Liquidating Creditor Trust Agreement ("Trust Agreement"). (b) all the property of the Debtors'
27 estates was transferred to the Creditor Trust, (c) the Creditor Trust was appointed the
28 representative of the Debtors' estates pursuant to section 1123 of the Bankruptcy Code and (d)

1 the Creditor Trust was provided the rights, powers and standing of a debtor in possession under
2 section 1107 of the Bankruptcy Code, to, among other things, sell, lease, license, abandon or
3 otherwise dispose of any or all property of the Creditor Trust, subject to approval of the
4 Bankruptcy Court. See Plan Article V sections F(1), F(2)(c). That property includes the
5 Trademarks.
6

7 As set forth in the Declaration of Michael Yetnikoff, the Creditor Trust solicited several
8 intellectual property marketing experts for proposals to value and sell the Trademarks. Each of
9 these experts required payment of a fee in excess of \$10,000.00 before beginning work, in
10 addition to a commission for sale. After reviewing the proposals, the Creditor Trust determined
11 that the cost of engaging a professional to market the Trademarks was excessive in light of their
12 probable value, and therefore decided to sell the Trademarks by advertised auction.
13

14 The Creditor Trust has received one substantial offer to buy the Trademarks. After good
15 faith, arms-length negotiations with the offeror (the "Prospective Buyer"), the Creditor Trust
16 accepted the Prospective Buyer's highest offer, in the amount of \$90,000.00, subject to this
17 Court's approval and the proposed sale procedure set forth herein. The Prospective Buyer is
18 Behr Process Corporation, which is not an insider or an affiliate of the Debtor or the Creditor
19 Trust. The Creditor Trust proposes to sell the Trademarks pursuant to section 363 of the
20 Bankruptcy Code, in accordance with the Plan and the Trust Agreement, and subject to the
21 approval of the Court, to the Prospective Buyer (or a higher bidder at the time of the sale),
22 utilizing the following procedures:
23

24 (a) Sale Date: The date and time of the sale will be set by the Court pursuant
25 to the instant Motion. At least thirty (30) days before the sale date, or such other period of time
26 as the Court may direct, the Creditor Trust will serve the Order and Notice of Sale upon the
27 Office of the United States Trustee and all other parties entitled to receive notice in the above-
28

1 captioned bankruptcy cases pursuant to the Court's Order dated February 7, 1996. A copy of the
2 proposed Order and Notice of Sale is attached as Exhibit B hereto.

3 (b) Purchase Price: The entire purchase price for the Trademarks will be
4 payable on cash upon closing

5 (c) Terms of Sale: The sale of the Trademarks shall be exclusively on the terms
6 contained herein and in the Sale Agreement and on any other terms as ordered by the Court. The
7 sale shall include all Trademarks, in order to avoid a costly piecemeal sale.

8 (d) Reimbursement of Reasonable Expenses to Prospective Buyer: The
9 Creditor Trust has entered into the Sale Agreement with the Prospective Buyer. A copy of the
10 Sale Agreement is attached as Exhibit A hereto. The Sale Agreement provides among other
11 things that (i) any subsequent bids shall be in increments of \$22,500.00, for a minimum bid of
12 \$112,250.00, which represents 25% of the price proposed in the Sale Agreement (the "Overbid
13 Amount"), and (ii) up to \$15,000.00 in reasonable and actual expenses will be reimbursed to the
14 Prospective Buyer from the proceeds of sale in the event an overbid occurs.

15 (e) Qualifications of Bidder: The Creditor Trust requests that, to bid at
16 the sale, any bidder must first submit a written bid meeting the overbid and expense
17 reimbursement requirements, set forth herein, to counsel for the Creditor Trust, within forty-eight
18 (48) hours of the sale, along with a cashier's or certified check payable to the Standard Brands
19 Liquidating Creditor Trust in an amount equal to ten percent (10%) of the Overbid Amount (the
20 "Deposit").

21 (f) Bankruptcy Court Approval: A proposed purchaser or competitive bidder
22 other than the Prospective Buyer shall be permitted to purchase the Trademarks only upon
23 approval by the Bankruptcy Court effective upon entry of an Order approving the sale of the
24 Trademarks to such purchaser.

1 The Creditor Trust believes that the sale of the Trademarks pursuant to the foregoing sale
2 and overbid procedure is necessary and appropriate to obtain the best price for the Trademarks.

3
4 III.

5 ARGUMENT

6 A. The Proposed Sale Meets the Standards Articulated in Section 363(b)(1) of
7 the Bankruptcy Code.

8 Bankruptcy Code section 363(b)(1) permits a debtor in possession, after notice and a
9 hearing, to "sell . . . other than in the ordinary course of business, property of the estate." 11
10 U.S.C. §363 (b) (1). The standards for approval of a sale pursuant to section 363 require that the
11 sale proponent establish that: (1) a sound business purpose justifies the sale; (2) accurate and
12 reasonable notice of the sale was provided; (3) the price to be paid is adequate, i.e., fair and
13 reasonable; and (4) the sale is proposed in "good faith," i.e., the absence of any lucrative deals
14 with insiders. See In re Industrial Valley Refrigeration And Air Conditioning Supplies, Inc., 77
15 B.R. 15, 21 (Bankr. E.D. Pa. 1987).

16 The Bankruptcy Appellate Panel in Walter v. Sunwest Bank (In re Walter), 83 B.R. 14
17 (Bankr. 9th Cir. 1988), adopted a flexible, case-by-case test to determine whether the business
18 purpose for a proposed sale justified disposition of property of the estate under section 363 (b).
19 In Walter, the court, adopting the reasoning of the Fifth Circuit in In re Continental Airlines, Inc.,
20 780 F.2d 1223 (5th Cir. 1986), and the Second Circuit in In re Lionel Corp., 722 F.2d 1063 (2nd
21 Cir. 1983), set forth the following articulation of the standard to be applied under section 363 (b):

23 The Fifth Circuit Court of Appeals in In re Continental Airlines . . . articulates the
24 criteria a bankruptcy court is to consider in deciding whether to approve or
25 disapprove the use of estate property under 11 U.S.C. § 363(b): We also agree
26 with the Second Circuit that implicit in Section 363(b) is the further requirement of
27 justifying the proposed transaction . . . That is, for the . . . trustee to satisfy
28 [his/her] fiduciary duties to the debtor, creditors and equity holders, there must be
some articulated business justification for using, selling, or leasing the property
outside the ordinary course of business . . . Whether the proffered business
justification is sufficient depends on the case. As the Second Circuit held in
Lionel, the bankruptcy judge should consider all salient factors pertaining to the

1 proceeding and, accordingly, act to further the diverse interests of the debtor's
2 creditors and equity holders, alike.

3 Walter, supra, 83 B.R. at 19-20 (quoting In re Continental Airlines, Inc., 780 F.2d 1223, 1226
4 (5th Cir. 1986) (internal citations omitted).

5 The proposed sale of the Trademarks meets these requirements. There is a sound business
6 purpose of raising funds to pay creditors, and the Trademarks are no longer of use to the Debtors.
7 Notice of the sale will be served on the Office of the United States Trustee, the Proposed
8 Purchaser, and all entities entitled to notice, and the sale will be advertised in a national trade
9 journal. The in-court auction sale procedure will insure that the price paid is the best possible
10 under the circumstances. Finally, the Prospective Buyer is not an insider, and the terms of sale
11 were negotiated at arms-length, so the sale is proposed in good faith. In light of these factors, the
12 sale is in the best interests of the creditors and should be permitted.
13

14 B. **This Court Should Set a Sale Date and Approve the Proposed**
15 **Procedures For Sale of the Trademarks.**

16 To date, only one prospective buyer has submitted a substantial offer to buy the
17 Trademarks. Accordingly, the Creditor Trust believes that an orderly auction sale is the best way
18 to ensure that the highest price is achieved. To that end, the Creditor Trust requests that any
19 party who wishes to bid at the sale submit a written bid in advance of the sale, and Deposit by
20 cashier's or certified check. These procedures will ensure the bona fide nature of any competitive
21 bidder.
22

23 The Creditor Trust also proposes that the proposed Order and Notice of Sale attached as
24 Exhibit B be placed in the trade journal *American Paint and Coatings*, which is the leading trade
25 publication in the paint industry, in order to afford wide notice of the sale to potentially interested
26 parties. The cost of such notice is estimated at \$1,500.00.
27
28

1 The 25% overbid increments and expense reimbursement contemplated hereby is fair and
2 equitable to the Prospective Buyer, because the Prospective Buyer has expended the resources
3 and efforts to develop its bid, to conduct due diligence, and to draft documents. The amount of
4 the overbid increment and the reimbursement cap were negotiated at arms-length, and are
5 reasonable under the circumstances
6

7 The sale is in the best interests of the estate as it will generate cash for payment of
8 unsecured creditors pursuant to the Plan. The \$90,000 00 purchase price was negotiated in good
9 faith, at arms length. The Creditor Trust believes that, absent other competitive bids, the amount
10 proposed to be paid by the Prospective Buyer is the highest and best price that can be obtained for
11 the Trademarks under the circumstances, but that upon entry of an Order approving the
12 procedures outlined above, it is possible that an additional bona fide competitive bidder may
13 emerge. Accordingly, the procedures outlined above will ensure that the Trademarks are sold for
14 the best price under the circumstances.
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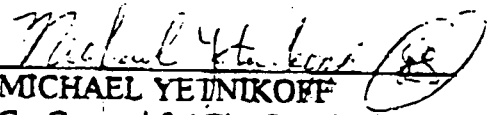
IV.

CONCLUSION

WHEREFORE, the Creditor Trust respectfully requests that this Court enter the proposed Order and Notice of Sale annexed as Exhibit B (a) approving the instant Motion; and (b) authorizing the sale by the Creditor Trust of its right, title and interest in the Trademarks, in accordance with the Sale Agreement; and further asks this Court for such other and further relief as this Court deems appropriate.

Dated July 8, 1998

BELL, BOYD & LLOYD, and
JEFFER, MANGELS, BUTLER &
MARMARO LLP


MICHAEL YELNIKOFF
Co-Counsel for The Standard
Brands Creditors Trust

1 DAVID F. HEROY (Illinois Bar No. 1199617)
2 MICHAEL YETNIKOFF (Illinois Bar No. 6198364)
3 BELL, BOYD & LLOYD
4 70 West Madison Street, Suite 3300
5 Chicago, Illinois 60602
6 Telephone Number: (312) 807-4244
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8 JOSEPH A. EISENBERG P.C. (Bar. No. 52346)
9 DAVID B. GOLUBCHIK (Bar No. 185520)
10 JEFFER, MANGELS, BUTLER & MARMARO LLP
11 2121 Avenue of the Stars, Tenth Floor
12 Los Angeles, California 90067
13 Telephone Number: (310) 203-8080
14 Facsimile Number (310) 203-0567
15 Co-Counsel for
16 The Standard Brands Liquidating Creditor Trust

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

13 In re) Case No. LA 95-43812-KM
14) Chapter 11
15 STANDARD BRANDS PAINT CO.,) (Jointly Administered and
16 a California corporation,) Substantively Consolidated with
17 STANDARD BRANDS PAINT COMPANY,) Case Nos. LA 95-43813-KM and
18 a Delaware corporation,) LA 95-43814-KM)
19 MAJOR PAINT COMPANY,)
20 a California corporation,)
21)
22) DECLARATION OF MICHAEL
23 Debtors.) YETNIKOFF IN SUPPORT
24) OF MOTION TO SELL TRADE-
25) MARKS PURSUANT TO SECTION
26) 363 OF THE BANKRUPTCY CODE
27)
28) Date:
Time:
Place: Courtroom 1468
255 E. Temple Street
Los Angeles, California

29 The undersigned, MICHAEL YETNIKOFF, being first duly sworn and on oath,
30 hereby declares:
31
32
33

1 1. I am of counsel to the law firm of Bell, Boyd & Lloyd, counsel to the
2 Standard Brands Liquidating Creditor Trust ("Creditor Trust"). I make this declaration in
3 support of the Creditor Trust's motion to sell trademarks pursuant to section 363 of the
4 Bankruptcy Code ("Motion").

5 2. I am over twenty-one (21) years of age and am competent to make this
6 declaration. Except as noted herein, this declaration is made upon personal knowledge.
7 All undefined capitalized terms herein have the meanings given them in the Motion.
8

9 3. The Creditor Trust has contacted several experts in the areas of marketing
10 and valuation of trademarks. Each of these experts quoted prices in excess of ten
11 thousand dollars (\$10,000.00) to commence an evaluation or marketing process.
12

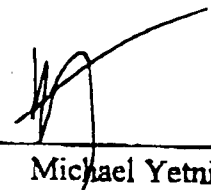
13 4. In light of the unknown value of the Trademarks, the Creditor Trust
14 elected not to expend out-of-pocket funds in hiring an expert to value or market the
15 Trademarks.

16 5. The Creditor Trust has received only one substantial offer, in the amount
17 of ninety thousand dollars (\$90,000.00), to purchase the Trademarks. The Prospective
18 Buyer has agreed to participate in an auction sale, with other possible prospective buyers
19 solicited by advertisement in the trade journal, *American Paint and Coatings Journal*.
20 The Prospective Buyer is not an insider of the Debtors or of the Creditor Trust.
21

22 6. The Prospective Buyer's bid, and its agreement to participate in the
23 auction sale process, are contingent upon its receiving overbid protection in the amount of
24 a twenty-five percent (25%) overbid increment, plus expense reimbursement of up to
25 fifteen thousand dollars (\$15,000.00) in actual and necessary expenses, to be paid by any
26 overbidder.
27
28

1 7. In light of the circumstances of this case, including (a) the existence of
2 only one known prospective purchaser which has made a substantial bid; (b) the unknown
3 value of the Trademarks; and (c) the fact that Standard Brands has not marketed paint
4 under the Trademarks for nearly two years, the Creditor Trust has agreed to the
5 conditions proposed by the Prospective Buyer.
6

7 8. In light of these circumstances, the proposed auction sale procedure,
8 together with the overbid and expense reimbursement requirements, present the best
9 opportunity for the Creditor Trust to receive maximum value for the Trademarks.
10

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12 
13 Michael Yetnikoff

14 Subscribed and Sworn to before me

15 this 6th day of July, 1998.

16 
17 Notary Public



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EXHIBIT A

TRADEMARK PURCHASE AND ASSIGNMENT AGREEMENT

Dated as of June 24, 1998

TRADEMARK PURCHASE AND ASSIGNMENT AGREEMENT

Dated as of June 24, 1998

between

THE STANDARD BRANDS LIQUIDATING CREDITOR TRUST

as Seller/Assignor

and

BEHR PROCESS CORPORATION, a California Corporation,

as Buyer/Assignor

EXHIBIT A

08-JUL-98 04:18pm From-JEFFER, MANGELS

+310-203-0567

T-072 P.21/65 F-840

TRADEMARK PURCHASE AND ASSIGNMENT AGREEMENT

This Trademark Purchase and Assignment Agreement (the "Agreement") is dated this day of June, 1998 and is made by and among THE STANDARD BRANDS LIQUIDATING CREDITOR TRUST ("Seller" or "Trust") and BEHR PROCESS CORPORATION, a California corporation ("Buyer").

RECITALS

A. On or about November 26, 1996, the United States Bankruptcy Court for the Central District of California ("Court") entered an order confirming the Revised Joint and Consolidated Plan of Liquidation of the Debtor and the Official Committee of Unsecured Creditors Dated July 23, 1997 (the "Plan") in consolidated case numbers LA95-43812-KM, LA95-43813-KM and LA95-43814-KM, titled respectively In re Standard Brands Paint Co., In re Standard Brands Paint Company, and In re Major Paint Company (collectively, "Debtors").

B. The Trust was created pursuant to the Plan and The Standard Brands Liquidating Creditor Trust Agreement ("Trust Agreement").

C. Pursuant to Article V section F.1 of the Plan and section 4.1 of the Trust Agreement, all the Debtors' right, title and interest in the Trademarks (as defined below) was transferred to the Trust as of the Effective Date of the Plan.

D. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Trademarks, pursuant to the terms, covenants and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

I.

SALE AND TRANSFER OF THE TRADEMARKS

1.1 Purchase and Sale. On the Closing Date, Seller shall sell, transfer, convey, and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of all liens and encumbrances all Seller's right, title and interest in and to the Trademarks referenced on Schedule 1.1 attached hereto and incorporated by reference, including all corresponding trade dress or other indicia of origin, all applications for trademark registrations, and all trademark registration and any renewals thereof, and further including, without limitation, (i) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (ii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past or future infringements thereof), and (iii) all rights corresponding thereto throughout the world and all other rights of any kind accruing thereunder, together in each case with the goodwill of the

business connected with the use of, and symbolized by all such Trademarks, associated therewith (the "Trademarks"). Buyer acknowledges that Seller does not presently maintain, nor has it ever maintained, any foreign registrations of the Trademarks. The sale of the Trademarks shall also include all licenses of such Trademarks to any person at any time wherein Seller or Seller's predecessors in interest granted rights, whether limited or unlimited, exclusive or non-exclusive, to use or exploit such Trademarks.

1.2 Assignment of Trademarks. Effective as of the Closing Date, Seller hereby assigns and transfers to Buyer, and its successors and assigns, all right, title and interest that Seller may possess in and to the Trademarks.

Seller agrees to execute all papers and documents and to perform such other proper acts as Buyer may deem necessary to secure to Buyer or to its designee the rights herein assigned.

1.3 Purchase Price. As consideration for the sale and assignment of the Trademarks, Buyer shall pay to Seller, by wire transfer, the amount of Ninety Thousand Dollars (\$90,000) on the Closing Date.

1.4 Overbid Procedure. The Seller and Buyer agree that Seller shall move the Court and properly notice all parties entitled to notice to allow for overbids at the time this Agreement is presented to the Court for approval as referenced in Section 4.2(b) hereinbelow.

Seller shall request that any competing bidder must be obligated to perform within or before the Closing Date; that any competing bid must be on the same or better terms as set forth in this Agreement; that no competing bidder may be allowed to offset against its proof of claim any amount; that competing bids must be in increments of no less than Twenty Two Thousand Five Hundred Dollars (\$22,500.00). In addition to the bid increment, all overbidders must agree to pay to Buyer a sum not to exceed Fifteen Thousand Dollars (\$15,000.00) to compensate Buyer for its actual, documented and reasonable expenses incurred in connection with this transaction.

II.

REPRESENTATIONS AND WARRANTIES BY SELLER

Seller represents and warrants to Buyer, for the benefit of Buyer, that:

2.1 Organization and Standing. The Trust is duly organized and validly existing under applicable law and is empowered pursuant to the Plan and the Trust Agreement to own and sell the Trust's interest in the Trademarks.

2.2 Prior Cessation of Business. Seller represents that Debtors ceased doing business in August, 1996, and have not marketed the Trademarks since that time. Debtors have not taken any action since at least August, 1996 to enforce or to maintain the Trademarks.

2.3 Transfer of Trademarks. As of the Closing Date, Seller's interest in the Trademarks will be transferred free and clear of any lien or encumbrance.

To the best of its knowledge, Seller has received no notice or claim of asserted or threatened infringement of the Trademarks in or against the trade names, Trademarks, service marks, or rights of others. To the best of Seller's knowledge, no other person will own or claim ownership of any right, title and interest in and to the Trademarks. To the best of Seller's knowledge, each Trademark registration, application, extension or renewal is validly subsisting and has not been adjudicated invalid or unenforceable in whole or in part. Subject to Section 2.2 hereof, Seller is unaware of any reason for the Trademarks to become invalid or unenforceable, including unauthorized uses by third parties. To the best of Seller's knowledge, the Trademarks have not been previously licensed, assigned, transferred, sold or subjected to claims which constitute or contemplate either a present or future license, assignment, transfer or encumbrance of such Trademarks. Seller has represented to Buyer and Buyer acknowledges, that Seller has undertaken no affirmative investigation regarding the matters set forth in this paragraph.

Prior to August, 1996, the Debtors used reasonable and proper statutory notices in connection with each Trademark. Except for approval of the Court and for the filing of assignments of Trademarks with the United States Patent and Trademark Office, no approval, authorization or other action and no notice or filing with any governmental authority or regulatory body is required for the transfer of the Trademarks to Buyer in accordance with the terms hereof. Prior to cessation of its business, the Debtors took all reasonably necessary steps to use consistent standards of quality in the manufacture, distribution and sale of all products sold in connection with the Trademarks during its ownership of the Trademarks.

2.4 Accuracy of Representation. To the best knowledge of Seller, no representation, warranty, statement, or schedule furnished by Seller to Buyer in connection with the transactions contemplated hereby contains any untrue statement of any material fact or omits to state any material fact necessary in order to make the statements contained herein or therein not misleading.

2.5 Authority of Seller. The transactions contemplated by this Agreement have been duly approved by the Trustees of the Trust, and this Agreement has been, and other instruments to be delivered under this Agreement by Seller to Buyer, have been or will be duly authorized, executed and delivered on behalf of the Seller and are or will be valid, binding and enforceable agreements in accordance with their terms. The Seller has full power and lawful authority to consummate the transactions contemplated hereby on the terms and conditions set forth and no permit, consent, approval, authorization or other order of or filing with any governmental authority, except for authorization from the Court, or any other person is required in connection with such authorization, execution, delivery and consummation.

2.6 No Breach or Default. The execution, delivery and performance of this Agreement will not (i) violate any provision of the Trust Agreement, or (ii) violate any statute, rule, regulation, order or decree of any court, public body or authority of the United States or any state or municipality.

EXHIBIT A

III.

REPRESENTATIONS AND WARRANTIES BY BUYER

Buyer represents and warrants to Seller that as of the date of this Agreement and the Closing Date:

3.1 Organization and Standing. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of California.

3.2 Authority of Buyer. The transactions contemplated by this Agreement have been duly approved by the Board of Directors of Buyer, and this Agreement has been, and other instruments to be delivered under this Agreement by Buyer to Seller have been, duly authorized, executed and delivered on behalf of Buyer and are or will be valid, binding and enforceable agreements in accordance with their terms. Buyer has full power and lawful authority to consummate the transactions contemplated hereby on the terms and conditions set forth and no permit, consent, approval, authorization or other order of or filing with any governmental authority or any other person is required in connection with such authorization, execution, delivery and consummation.

3.3 No Breach or Default. The execution, delivery and performance of this Agreement will not (i) violate any provision of the Articles of Incorporation or Bylaws of Buyer, or (ii) violate any statute, rule, regulation, order or decree of any court, public body or authority of the United States or any state or public body or authority of the United States or any state or municipality.

IV.

COURT APPROVAL

4.1 Court Approval. Buyer and Seller recognize and agree that approval of the Court is necessary to consummate the sale referenced herein. If the Court declines to approve this Agreement for any reason, this Agreement shall be terminated and Buyer and Seller shall each be released from all their respective obligations hereunder.

V.

CLOSING DATE

5.1 Closing Date. The transfer of the Trademarks by Seller to Buyer shall occur within forty-eight (48) hours after entry of an order of the Court approving the sale of the Trademarks to the Buyer, this Agreement, and its Schedules and Exhibits, (the "Closing Date"), at the law offices of Lazof & Coss, 4590 MacArthur Boulevard, Suite 390, Newport Beach, California 92660, or such other time and place as the parties may agree.

5.2 Obligations of Seller. On or before the Closing Date, Seller shall deliver or cause to be delivered to Buyer:

(a) Two (2) duplicate originals of this executed Trademark Purchase and Assignment Agreement; and

(b) Such other documents, instruments, and agreements as may be reasonably required to consummate the transaction described herein and as required hereunder, including but not limited to a short form assignment of the Trademarks for filing with the United States Patent and Trademark office.

5.3 Obligations of Buyer. At the Closing Date, Buyer shall deliver or cause to be delivered to Seller:

(a) Wire transfer of the purchase price referenced hereinabove at Section 1.2;

(b) Two (2) duplicate originals of this executed Trademark Purchase and Assignment Agreement; and

(c) Such other documents, instruments and agreements as may be reasonably required to consummate the transactions described herein and as required hereunder.

VI.

EXPENSES AND TAXES

Buyer and Seller shall pay their own expenses incurred in connection with the transaction described herein, including without limitation, transfer fees, permit fees and fees and expenses of each party's legal counsel, accountants and other advisors.

VII.

SURVIVAL OF REPRESENTATIONS

All representations, warranties, and covenants in this Agreement shall be deemed and construed to be continuing representations, warranties, covenants and indemnifications which shall survive the Closing Date and the execution and delivery of all instruments and documents herein provided for and any investigation at any time made by or on behalf of Buyer.

VIII.

BROKERS

Each party to this Agreement represents and warrants to the other party that no broker or finder has acted for it in connection with this Agreement or the transactions contemplated hereby and that no broker or finder is entitled to any brokerage or finder's fee or other commission.

EXHIBIT A

Each party to this Agreement agrees to defend, indemnify and hold harmless the other party hereto with respect to any claim for any brokerage or finder's fee or other commission arising out of or in any manner connected to a breach of the foregoing representations and warranties.

IX.

NOTICES

All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, given by prepaid telegram or mailed first-class, postage prepaid, registered or certified mail as follows:

If to Buyer: **BEHR PROCESS CORPORATION**
Attn: Ronald C. Lazof, President and CEO
3400 West Segerstrom Ave.
Santa Ana, CA 92704

With a Copy to: **LAZOF & COSS**
Attn: Barry R. Shreier
4590 MacArthur Blvd., Ste. 390
Newport Beach, CA 92660

If to Seller: **THE LORD GROUP**
Attn: Ann Garreud
810 Seventh Avenue
New York, NY 10019

With a copy to: **BELL, BOYD & LOYD**
Attn: Michael Yetnikoff
3 First National Plaza
70 West Madison, Ste. 3200
Chicago, IL 60602

X.

MISCELLANEOUS

10.1 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

10.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

10.3 Waiver. Waiver of any default or breach of this Agreement or of any warranty, representation, covenant or obligation contained herein shall not be construed as a waiver of any subsequent breach.

10.4 Entire Agreement. This Agreement, and the instruments referenced herein, contain the entire agreement of the parties with respect to the matters set forth herein, and supersedes any prior written or oral Agreement between them respecting the subject matter contained herein.

10.5 Amendment. This Agreement cannot be modified or amended except by a writing signed by all the parties hereto.

10.6 Cumulative Remedies. No right or remedy herein conferred on or reserved to either party is intended to be exclusive of any other remedy or right, and each and every right or remedy shall be cumulative and in addition to any right or remedy given hereunder or now or hereafter existing at law or in equity or by statute.

10.7 Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, representatives and assigns.

10.8 Assignment and Delegation. This Agreement and the rights and duties hereunder may not be assigned by any party.

10.9 Further Assurances. Whenever and so often as requested by a party, the other party will promptly execute and deliver, or cause to be executed and delivered, all such other and further and further instruments, documents or assurances, and promptly do or cause to be done all such other and further things as may be necessary and reasonably required in order to further and more fully discharge and perform the obligations and agreements hereunder, and to more fully vest in such requesting party, all rights, interests, powers, benefits, privileges and advantages conferred, or intended to be conferred, upon it by this agreement.

10.10 Form of Documents. All instruments, certificates and other documents to be executed and delivered under this Agreement by any party to any other party shall be in a form satisfactory to the counsel for the other party.

10.11 Executed Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute a single agreement.

10.12 Section Headings. The various section headings are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Agreement or any section thereof.

EXHIBIT A

10.13 Exhibits and Schedules a Part of This Agreement. The exhibits and schedules attached hereto are incorporated in this Agreement by reference and are hereby made a part hereof.

10.14 Construction of Agreement. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, no uncertainty or ambiguity shall be construed or resolved against any party under any rule of construction, including the party primarily responsible for the drafting and preparation of this Agreement.

10.15 Special Power of Attorney. As of the Closing Date, Seller hereby appoints Buyer as its attorney-in-fact with full authority in its place and stead and in its name to execute any instrument that may be necessary or appropriate to file such applications, assignments, renewals or extensions of the Trademarks as shall, from time to time, be necessary or appropriate to give effect to the intention and purpose of this Agreement in the event that Seller fails to execute and deliver any such document within a reasonable time following request.

10.16 Construction of Agreement. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa.

10.17 Bankruptcy Court Jurisdiction. The United States Bankruptcy Court for the Central District of California shall have exclusive jurisdiction over any controversy arising from or in connection with this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement in one or more counterparts which, taken together, shall constitute one Agreement.

DATED: June 17, 1998

BUYER:

BEHR PROCESS CORPORATION,
a California corporation

BY:

RONALD C. LAZOF
President and Chief Executive Officer

SELLER:

**STANDARD BRANDS LIQUIDATING
CREDITOR TRUST**

DATED: June __, 1998

BY: _____

NAME: _____

TITLE: _____

Schedule 1.1 Trademarks

Potentially Marketable Federal Trademark Registrations of Standard Brands and Major Paint

Trademark	Status	Regs. Date	Regis. No.	Expir. Date
A-1	Renewed 7/23/92	5/30/72	0934822	5/30/02
[Rainbow Brush Design]	Renewed 2/14/95	12/31/74	1000823	12/31/04
Super-Tone	Renewed 5/10/95	6/3/75	1011992	6/3/05
Style Faire	Registered	4/28/81	1152464	4/28/01
Hide-All	Registered	6/28/83	1243352	6/28/03
New Finish	Registered	10/18/83	1254871	10/18/03
Standard Brands	Registered	3/19/85	1325283	3/19/05
Magic	Registered	11/1/88	1510591	11/1/08
Major	Registered	7/4/89	1545962	7/4/09
Rust Defender	Registered	11/1/88	1510592	11/1/08
Advantage	Registered	8/29/89	1553392	8/29/09
[Human Paint Can Design]		9/10/91	1656883	9/10/01
Standard Brands	Registered	12/1/92	1735892	12/1/02
Standard Brands	Registered	8/24/93	1789106	8/24/03
M	Registered	11/16/93	1804011	11/16/03
[Radiant Brush Design]	Registered	5/10/94	1835075	5/10/04
Contractors Choice	Registered	9/27/94	1855455	9/27/04
Standard Brands Windsor 21	Registered	2/28/95	1881084	2/28/05
Cycle II	Registered	2/15/94	1820909	2/15/04
Wall of Another Color	Registered	6/6/95	1897922	6/6/05
Neat and Clean	Registered	3/7/95	1881743	3/7/05
Kiddo the Toughest Paint ...	Registered	3/14/95	1884174	3/14/05
Decade	Registered	4/23/96	1969104	4/23/06
Professional Pride	Registered	3/5/96	1960748	3/5/06
Kiddo	Registered	8/24/95	1929284	8/24/05
Contractor's Grade A	Registered	5/23/95	1895689	5/23/05
Contermpo	Registered	4/18/95	1889545	4/18/05
[Design]	Registered	9/3/96	1998288	9/3/06
Cubremax	Registered	9/24/96	2002937	9/24/06
Durapaint	Registered	10/15/96	2008397	10/15/06
Gallerie	Opposition pend'g			

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EXHIBIT B

**ORDER AND NOTICE OF SALE
OF TRADEMARKS OF STANDARD BRANDS
PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE**

EXHIBIT A

1 DAVID F. HEROY (Illinois Bar No 1199617)
2 MICHAEL YETNIKOFF (Illinois Bar No. 6198364)
3 BELL, BOYD & LLOYD
4 Three First National Plaza
5 70 West Madison Street, Suite 3300
6 Chicago, Illinois 60602
7 Telephone Number (312) 807-4244
8 Facsimile Number (312) 372-2098

9 JOSEPH A. EISENBERG P.C. (Bar. No. 52346)
10 DAVID B. GOLUBCHIK (Bar No 185520)
11 JEFFER, MANGELS, BUTLER & MARMARO LLP
12 2121 Avenue of the Stars, Tenth Floor
13 Los Angeles, California 90067
14 Telephone Number (310) 203-8080
15 Facsimile Number (310) 203-0567

16 Co-Counsel for
17 The Standard Brands Liquidating Creditor Trust

11 UNITED STATES BANKRUPTCY COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 LOS ANGELES DIVISION

14 In re) Case No LA 95-43812-KM
15) Chapter 11
16 STANDARD BRANDS PAINT CO ,) (Jointly Administered and
17 a California corporation,) Substantively Consolidated with
18 STANDARD BRANDS PAINT COMPANY,) Case Nos. LA 95-43813-KM and
19 a Delaware corporation,) LA 95-43814-KM)
20 MAJOR PAINT COMPANY,)
21 a California corporation,)
22 Debtors.) ORDER AND NOTICE OF SALE
23) OF TRADEMARKS FREE AND
24) CLEAR OF LIENS, CLAIMS AND
25) OTHER INTERESTS
26)
27)
28)

22 This matter coming before the Court on the Motion of the Standard Brands
23 Liquidating Creditor Trust ("Creditor Trust") for Entry of Order Pursuant to Section 363 of the
24 Bankruptcy Code Authorizing Sale of Trademarks Free and Clear of Liens, Claims and Other
25 Interests ("Motion"); proper notice having been provided all parties so entitled; this Court having
26 reviewed the Motion and Exhibits thereto and the Declaration in support thereof, the Court
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28

1 having held a hearing on this matter and considered the representations of counsel at that hearing.
2 and the Motion appearing to be in the best interests of the estate and of creditors;
3

4 THIS COURT HEREBY ORDERS THAT.

5 1 The Motion is granted.

6 2. On _____, at _____, an in-court sale (the "Sale") will be
7 held whereby the Creditor Trust's interest in the Trademarks (as defined in the Motion) shall be
8 sold to the Prospective Buyer (as defined in the Motion), on the terms set forth in the Sale
9 Agreement annexed as Exhibit A to the Motion, or to any higher bidder that meets the
10 requirements set forth in the Motion.
11

12 3. In order to bid at the sale, a potential bidder must have submitted to
13 counsel for the Creditor Trust no later than 48 hours before the Sale, (a) a written cash bid of not
14 less than 25% over the Prospective Buyer's \$90,000.00 offer to purchase all the Trademarks (a
15 total of \$112,500.00), plus provision for up to \$15,000.00 in reimbursement of actual and
16 reasonable expenses to the Prospective Buyer, pursuant to adequate evidence submitted by the
17 Prospective Buyer; and (b) a 10% of the Overbid Amount, or \$11,250.00, bid deposit by cashier's
18 or certified check, payable to the Standard Brands Creditor Trust. Any bid must be on the terms
19 set forth in the Sale Agreement annexed as Exhibit A to the Motion.
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22 4. At the Sale, the Creditor Trust's interest in the Trademarks shall be sold
23 free and clear of all other liens, claims and other interests, pursuant to section 363 of the
24 Bankruptcy Code.
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26 5. Any prospective bidder may obtain a copy of the Motion by submitting a
27 written request to counsel for the Creditor Trust.
28

6. The Creditor Trust is authorized and directed to place this Order and Notice of Sale in the *American Paint and Coatings Journal*.

DATED:

KATHLEEN MARCH
UNITED STATES BANKRUPTCY JUDGE

1 DAVID F. HEROY (Illinois Bar No. 1199617)
MICHAEL YETNIKOFF (Illinois Bar No. 6198364)
2 BELL, BOYD & LLOYD
Three First National Plaza
70 West Madison Street, Suite 3300
3 Chicago, Illinois 60602
Telephone Number: (312) 807-4246
4 Facsimile Number: (312) 372-2098

-and-

5 JOSEPH A. EISENBERG P.C. (Bar No. 52346)
DAVID B. GOLUBCHIK (Bar No. 185520)
JEFFER, MANGELS, BUTLER & MARMARO LLP
6 2121 Avenue of the Stars, Tenth Floor
Los Angeles, California 90067
7 Telephone Number: (310) 203-8080
Facsimile Number: (310) 203-0567

8 Co-Counsel for The Standard Brands
Creditor Trust

9
10 UNITED STATES BANKRUPTCY COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 In re

13 STANDARD BRANDS PAINT CO.,
14 a California corporation,
STANDARD BRANDS PAINT COMPANY,
15 a Delaware corporation,
MAJOR PAINT COMPANY,
16 a California corporation,

17 Debtors.

) Case No. LA 95-43812-KM
)
) Chapter 11
)
) [Jointly Administered and
) Substantively Consolidated
) with Case Nos. LA 95-43813 KM
) and LA 95-43814 KM]
)
)
) EX PARTE APPLICATION FOR ENTRY
) OF AN ORDER PURSUANT TO
) SECTION 363 OF THE BANKRUPTCY
) CODE AUTHORIZING SALE OF
) TRADEMARKS FREE AND CLEAR OF
) LIENS, CLAIMS AND OTHER
) INTERESTS, OR, IN THE
) ALTERNATIVE, THAT THIS COURT
) SHORTEN NOTICE OF THE HEARING
) ON THE MOTION.

)
) [No Hearing Required]
) [Local Bankr. Rule 9075-1]
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1 TO THE HONORABLE KATHLEEN P. MARCH, UNITED STATES BANKRUPTCY
2 JUDGE:

3 Pursuant to Local Bankruptcy Rule 9075-1, The Standard
4 Brands Creditor Trust (the "Trust") hereby requests, on an ex
5 parte basis (the "Ex Parte Application"), that this Court enter
6 an order granting the Trust's Motion for Entry of an Order
7 Pursuant to Section 363 of the Bankruptcy Code Authorizing Sale
8 of Trademarks Free and Clear of Liens, Claims and Other Interests
9 (the "Motion"), a copy of which is attached hereto as Exhibit A,
10 or, in the alternative, that this Court shorten notice of the
11 hearing on the Motion.

12 The Ex Parte Application is based on this Ex Parte
13 Application, the Motion, which is attached hereto as Exhibit A
14 and filed concurrently herewith, the Declaration of Michael
15 Yetnikoff annexed to the Motion, and the record in this case.

16 This Ex Parte Application is made pursuant to Local
17 Bankruptcy Rule 9075-1 based on the following facts:

18 1. The Debtors in the above-referenced chapter 11
19 bankruptcy cases own certain trademarks related to its paint
20 products (the "Trademarks"). A list of the Trademarks is
21 attached to the Motion as Schedule 1.1 to Exhibit "A".

22 2. The Debtors and the Trust have no use for the
23 Trademarks. In order to maximize the value of the Debtors'
24 estates, and to yield a greater distribution to the creditors,
25 the Creditor Trust seeks to sell the Trademarks to the highest
26 bidder.

27 3. Behr Process Corporation made an offer to purchase the
28 Trademarks for \$90,000. While the Trust believes that proposed

Ex Parte Trademark.doc

1 sale amount is in the best interest of the Debtors' estates, in
2 an overabundance of caution, the Trust seeks Court permission to
3 advertise the sale in a major paint-related industry trade
4 publication, *American Paint and Coatings* ("APC").

5 4. However, the deadline to submit advertisements for the
6 next publication of APC is July 22, 1998. If a hearing is
7 scheduled on regular notice, the Trust will miss the July 22,
8 1998 deadline, and will be forced to wait for the next quarterly
9 publication of APC.

10 Based on the foregoing, the Trust requests that this Court
11 consider the Motion, which is attached hereto as Exhibit A.
12 without a hearing or on shortened time, so that the Trust can
13 properly advertise the sale of the Trademarks in order to yield
14 the greatest return to the creditors.

15 Dated: July 8, 1998

BELL, BOYD & LLOYD, and
JEFFER, MANGELS, BUTLER &
MARMARO LLP

18
19 
20 MICHAEL YETNIKOFF
21 Co-Counsel for The Standard
22 Brands Creditors Trust
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24
25
26
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1 DAVID F HEROY (Illinois Bar No. 1199617)
 2 MICHAEL YETNIKOFF (Illinois Bar No. 6198364)
 3 BELL, BOYD & LLOYD
 4 Three First National Plaza
 5 70 West Madison Street, Suite 3300
 6 Chicago, Illinois 60602
 7 Telephone Number: (312) 807-4244
 8 Facsimile Number: (312) 372-2098
 9
 10 JOSEPH A EISENBERG P.C. (Bar No. 52346)
 11 DAVID B GOLUBCHIK (Bar No. 185520)
 12 JEFFER MANGELS, BUTLER & MARMARO LLP
 13 2121 Avenue of the Stars, Tenth Floor
 14 Los Angeles, California 90067
 15 Telephone Number: (310) 203-8080
 16 Facsimile Number: (310) 203-0567
 17
 18 Co-Counsel for
 19 The Standard Brands Liquidating Creditor Trust

**UNITED STATES BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIFORNIA**

13	In re	) Case No. LA 95-43812-KM
14		) Chapter 11
15	STANDARD BRANDS PAINT CO.,	) (Jointly Administered and
16	a California corporation,	) Substantively Consolidated with
17	STANDARD BRANDS PAINT COMPANY,	) Case Nos. LA 95-43813-KM and
18	a Delaware corporation,	) LA 95-43814-KM)
19	MAJOR PAINT COMPANY,)
20	a California corporation,)
21		) NOTICE OF MOTION FOR
22	Debtors.	) ENTRY OF ORDER PURSUANT
23		) TO SECTION 363 OF THE
24		) BANKRUPTCY CODE
25		) AUTHORIZING SALE OF
26		) TRADEMARKS FREE AND CLEAR
27		) OF LIENS, CLAIMS, OTHER
28		) INTERESTS; MEMORANDUM
		) OF POINTS AND AUTHORITIES IN
		) SUPPORT THEREOF; AND
		) DECLARATION OF MICHAEL
		) YETNIKOFF IN SUPPORT
		) THEREOF
)
		) Date:
		) Time:
		) Place: Courtroom 1468
		) 255 E. Temple Street
		) Los Angeles, California

EXHIBIT A

1 TO: THE OFFICE OF THE UNITED STATES TRUSTEE, AND
2 ALL OTHER PARTIES ENTITLED TO RECEIVE NOTICE
3 IN THESE CASES PURSUANT TO THE COURT'S ORDER
4 OF FEBRUARY 7, 1996:

5 PLEASE TAKE NOTICE that the Standard Brands Liquidating Creditor Trust hereby
6 moves this Court for Entry of an Order Pursuant to Section 363 of the Bankruptcy Code
7 Authorizing Sale of Trademarks Free and Clear of Liens, Claims and Other Interests (the
8 "Motion"), for the following relief:

9 (a) To establish procedures for notice, bidding, overbids and reimbursement of costs
10 and expenses in connection with the proposed sale of the Creditor Trust's interest in the
11 Trademarks ("Trademarks") listed on Schedule 1 1 of the Trademark Purchase and Assignment
12 Agreement, Exhibit A hereto ("Sale Agreement"), including, among others, the "Standard
13 Brands", "Decade" and "Hide-All" marks;

14 (b) To set a date for the sale of the Creditor Trust's interest in the Trademarks; and

15 (c) To approve a sale of the Trademarks to the Prospective Buyer (as defined herein),
16 or to any higher bidder at the sale, on the terms set forth in the Sale Agreement.

17 PLEASE TAKE FURTHER NOTICE that a hearing on the Motion shall be conducted
18 before the Honorable Kathleen P. March, United States Bankruptcy Judge, or such other Judge of
19 this Court as may be sitting in her stead, on July __, 1998 at ____ in Courtroom 1468 of the
20 Edward R. Roybal Federal Building and Courthouse, 255 East Temple Street, Los Angeles,
21 California.

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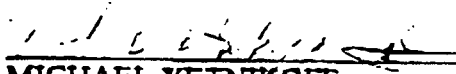
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1 **NOW PLEASE TAKE FURTHER NOTICE** that, in accordance with Local
2 Bankruptcy Rule 111(1)(g), except as otherwise provided by the Court, any response to the
3 Motion must be in writing and filed and served not later than eleven (11) days prior to the date of
4 the hearing on the Motion. The failure of any party to timely file and serve such responses may be
5 deemed by the Court to be consent to the relief requested in the Motion.
6

7 Dated: July 8, 1998

BELL, BOYD & LLOYD, and
JEFFER, MANGELS, BUTLER &
MARMARO LLP


MICHAEL YETNIKOFF
Co-Counsel for The Standard
Brands Creditors Trust

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I.**

4 **INTRODUCTION**

5 The Creditor Trust has moved this Court pursuant to section 363 of the United States
6 Bankruptcy Code, 11 U.S.C. §101, et seq (the "Bankruptcy Code"), for the following relief as
7 set forth herein and in the proposed Order and Notice of Sale annexed as Exhibit B hereto.
8

9 (a) To establish procedures for notice, bidding, overbids and reimbursement of
10 costs and expenses in connection with the proposed sale of the Creditor Trust's interest in the
11 Trademarks, including, among others, the "Standard Brands", "Decade", and "Hide-All" marks.

12 (b) To set a date for the sale of the Creditor Trust's interest in the Trademarks;
13 and

14 (c) To approve a sale of the Trademarks to the Prospective Buyer (as defined
15 herein), or to any higher bidder at the sale, on the terms set forth in the Sale Agreement.
16

17 **II.**

18 **STATEMENT OF FACTS**

19 On December 27, 1995, the Debtors filed voluntary petitions for relief under chapter 11 of
20 the Bankruptcy Code. The Debtors ceased doing business in August, 1996. By order entered
21 November 26, 1997, the Court confirmed the Revised Joint and Consolidated Plan of Liquidation
22 of the Debtors and the Official Committee of Unsecured Creditors dated July 23, 1997, as
23 Modified (the "Plan").
24

25 Pursuant to the Plan, (a) the Creditor Trust was created by the Standard Brands
26 Liquidating Creditor Trust Agreement ("Trust Agreement"), (b) all the property of the Debtors'
27 estates was transferred to the Creditor Trust, (c) the Creditor Trust was appointed the
28 representative of the Debtors' estates pursuant to section 1123 of the Bankruptcy Code and (d)

1 the Creditor Trust was provided the rights, powers and standing of a debtor in possession under
2 section 1107 of the Bankruptcy Code, to, among other things, sell, lease, license, abandon or
3 otherwise dispose of any or all property of the Creditor Trust, subject to approval of the
4 Bankruptcy Court. See Plan Article V sections F(1), F(2)(c). That property includes the
5 Trademarks

6
7 As set forth in the Declaration of Michael Yetnikoff, the Creditor Trust solicited several
8 intellectual property marketing experts for proposals to value and sell the Trademarks. Each of
9 these experts required payment of a fee in excess of \$10,000.00 before beginning work, in
10 addition to a commission for sale. After reviewing the proposals, the Creditor Trust determined
11 that the cost of engaging a professional to market the Trademarks was excessive in light of their
12 probable value, and therefore decided to sell the Trademarks by advertised auction.

13
14 The Creditor Trust has received one substantial offer to buy the Trademarks. After good
15 faith, arms-length negotiations with the offeror (the "Prospective Buyer"), the Creditor Trust
16 accepted the Prospective Buyer's highest offer, in the amount of \$90,000.00, subject to this
17 Court's approval and the proposed sale procedure set forth herein. The Prospective Buyer is
18 Behr Process Corporation, which is not an insider or an affiliate of the Debtor or the Creditor
19 Trust. The Creditor Trust proposes to sell the Trademarks pursuant to section 363 of the
20 Bankruptcy Code, in accordance with the Plan and the Trust Agreement, and subject to the
21 approval of the Court, to the Prospective Buyer (or a higher bidder at the time of the sale),
22 utilizing the following procedures:

23
24 (a) Sale Date: The date and time of the sale will be set by the Court pursuant
25 to the instant Motion. At least thirty (30) days before the sale date, or such other period of time
26 as the Court may direct, the Creditor Trust will serve the Order and Notice of Sale upon the
27 Office of the United States Trustee and all other parties entitled to receive notice in the above-
28

1 captioned bankruptcy cases pursuant to the Court's Order dated February 7, 1996. A copy of the
2 proposed Order and Notice of Sale is attached as Exhibit B hereto.

3 (b) Purchase Price: The entire purchase price for the Trademarks will be
4 payable on cash upon closing.

5 (c) Terms of Sale: The sale of the Trademarks shall be exclusively on the terms
6 contained herein and in the Sale Agreement and on any other terms as ordered by the Court. The
7 sale shall include all Trademarks, in order to avoid a costly piecemeal sale

8 (d) Reimbursement of Reasonable Expenses to Prospective Buyer: The
9 Creditor Trust has entered into the Sale Agreement with the Prospective Buyer. A copy of the
10 Sale Agreement is attached as Exhibit A hereto. The Sale Agreement provides among other
11 things that (i) any subsequent bids shall be in increments of \$22,500.00, for a minimum bid of
12 \$112,250.00, which represents 25% of the price proposed in the Sale Agreement (the "Overbid
13 Amount"), and (ii) up to \$15,000.00 in reasonable and actual expenses will be reimbursed to the
14 Prospective Buyer from the proceeds of sale in the event an overbid occurs.

15 (e) Qualifications of Bidder: The Creditor Trust requests that, to bid at
16 the sale, any bidder must first submit a written bid meeting the overbid and expense
17 reimbursement requirements, set forth herein, to counsel for the Creditor Trust, within forty-eight
18 (48) hours of the sale, along with a cashier's or certified check payable to the Standard Brands
19 Liquidating Creditor Trust in an amount equal to ten percent (10%) of the Overbid Amount (the
20 "Deposit").

21 (f) Bankruptcy Court Approval: A proposed purchaser or competitive bidder
22 other than the Prospective Buyer shall be permitted to purchase the Trademarks only upon
23 approval by the Bankruptcy Court effective upon entry of an Order approving the sale of the
24 Trademarks to such purchaser.

1 The Creditor Trust believes that the sale of the Trademarks pursuant to the foregoing sale
2 and overbid procedure is necessary and appropriate to obtain the best price for the Trademarks.

3
4 III.

5 ARGUMENT

6 A. The Proposed Sale Meets the Standards Articulated in Section 363(b)(1) of
7 the Bankruptcy Code.

8 Bankruptcy Code section 363(b)(1) permits a debtor in possession, after notice and a
9 hearing, to "sell . . . , other than in the ordinary course of business, property of the estate." 11
10 U.S.C. §363 (b) (1). The standards for approval of a sale pursuant to section 363 require that the
11 sale proponent establish that: (1) a sound business purpose justifies the sale; (2) accurate and
12 reasonable notice of the sale was provided; (3) the price to be paid is adequate, i.e., fair and
13 reasonable, and (4) the sale is proposed in "good faith," i.e., the absence of any lucrative deals
14 with insiders. See In re Industrial Valley Refrigeration And Air Conditioning Supplies, Inc., 77
15 B.R. 15, 21 (Bankr. E.D. Pa. 1987).

16 The Bankruptcy Appellate Panel in Walter v. Sunwest Bank (In re Walter), 83 B.R. 14
17 (Bankr. 9th Cir. 1988), adopted a flexible, case-by-case test to determine whether the business
18 purpose for a proposed sale justified disposition of property of the estate under section 363 (b).
19 In Walter, the court, adopting the reasoning of the Fifth Circuit in In re Continental Airlines, Inc.,
20 780 F.2d 1223 (5th Cir. 1986), and the Second Circuit in In re Lionel Corp., 722 F.2d 1063 (2nd
21 Cir. 1983), set forth the following articulation of the standard to be applied under section 363 (b):

23 The Fifth Circuit Court of Appeals in In re Continental Airlines . . . articulates the
24 criteria a bankruptcy court is to consider in deciding whether to approve or
25 disapprove the use of estate property under 11 U.S.C. § 363(b): We also agree
26 with the Second Circuit that implicit in Section 363(b) is the further requirement of
27 justifying the proposed transaction . . . That is, for the . . . trustee to satisfy
28 [his/her] fiduciary duties to the debtor, creditors and equity holders, there must be
some articulated business justification for using, selling, or leasing the property
outside the ordinary course of business . . . Whether the proffered business
justification is sufficient depends on the case. As the Second Circuit held in
Lionel, the bankruptcy judge should consider all salient factors pertaining to the

proceeding and, accordingly, act to further the diverse interests of the debtor's creditors and equity holders, alike.

Walter, supra, 83 B.R. at 19-20 (quoting In re Continental Airlines, Inc., 780 F.2d 1223, 1226 (5th Cir. 1986) (internal citations omitted))

The proposed sale of the Trademarks meets these requirements. There is a sound business purpose of raising funds to pay creditors, and the Trademarks are no longer of use to the Debtors. Notice of the sale will be served on the Office of the United States Trustee, the Proposed Purchaser, and all entities entitled to notice, and the sale will be advertised in a national trade journal. The in-court auction sale procedure will insure that the price paid is the best possible under the circumstances. Finally, the Prospective Buyer is not an insider, and the terms of sale were negotiated at arms-length, so the sale is proposed in good faith. In light of these factors, the sale is in the best interests of the creditors and should be permitted.

B This Court Should Set a Sale Date and Approve the Proposed Procedures For Sale of the Trademarks.

To date, only one prospective buyer has submitted a substantial offer to buy the Trademarks. Accordingly, the Creditor Trust believes that an orderly auction sale is the best way to ensure that the highest price is achieved. To that end, the Creditor Trust requests that any party who wishes to bid at the sale submit a written bid in advance of the sale, and Deposit by cashier's or certified check. These procedures will ensure the bona fide nature of any competitive bidder.

The Creditor Trust also proposes that the proposed Order and Notice of Sale attached as Exhibit B be placed in the trade journal *American Paint and Coatings*, which is the leading trade publication in the paint industry, in order to afford wide notice of the sale to potentially interested parties. The cost of such notice is estimated at \$1,500.00.

1 The 25% overbid increments and expense reimbursement contemplated hereby is fair and
2 equitable to the Prospective Buyer, because the Prospective Buyer has expended the resources
3 and efforts to develop its bid, to conduct due diligence, and to draft documents. The amount of
4 the overbid increment and the reimbursement cap were negotiated at arms-length, and are
5 reasonable under the circumstances.
6

7 The sale is in the best interests of the estate as it will generate cash for payment of
8 unsecured creditors pursuant to the Plan. The \$90,000.00 purchase price was negotiated in good
9 faith, at arms length. The Creditor Trust believes that, absent other competitive bids, the amount
10 proposed to be paid by the Prospective Buyer is the highest and best price that can be obtained for
11 the Trademarks under the circumstances, but that upon entry of an Order approving the
12 procedures outlined above, it is possible that an additional bona fide competitive bidder may
13 emerge. Accordingly, the procedures outlined above will ensure that the Trademarks are sold for
14 the best price under the circumstances.
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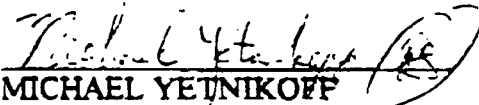
IV.

CONCLUSION

WHEREFORE, the Creditor Trust respectively requests that this Court enter the proposed Order and Notice of Sale annexed as Exhibit B (a) approving the instant Motion; and (b) authorizing the sale by the Creditor Trust of its right, title and interest in the Trademarks, in accordance with the Sale Agreement; and further asks this Court for such other and further relief as this Court deems appropriate.

Dated: July 8, 1998

BELL, BOYD & LLOYD, and
JEFFER MANGELS, BUTLER &
MARMARO LLP


MICHAEL YETNIKOFF
Co-Counsel for The Standard
Brands Creditors Trust

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13 Telephone Number: (310) 203-8080
14 Facsimile Number (310) 203-0567

15 Co-Counsel for
16 The Standard Brands Liquidating Creditor Trust

17
18 **UNITED STATES BANKRUPTCY COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 In re) Case No. LA 95-43812-KM
21) Chapter 11
22 STANDARD BRANDS PAINT CO.,) (Jointly Administered and
23 a California corporation,) Substantively Consolidated with
24 STANDARD BRANDS PAINT COMPANY,) Case Nos. LA 95-43813-KM and
25 a Delaware corporation,) LA 95-43814-KM)
26 MAJOR PAINT COMPANY,)
27 a California corporation,)
28 Debtors.) **DECLARATION OF MICHAEL**
) **YETNIKOFF IN SUPPORT**
) **OF MOTION TO SELL TRADE-**
) **MARKS PURSUANT TO SECTION**
) **363 OF THE BANKRUPTCY CODE**
)
) Date:
) Time:
) Place: Courtroom 1468
) 255 E. Temple Street
) Los Angeles, California

29 The undersigned, MICHAEL YETNIKOFF, being first duly sworn and on oath,
30 hereby declares:
31
32

1 I am of counsel to the law firm of Bell, Boyd & Lloyd, counsel to the
2 Standard Brands Liquidating Creditor Trust ("Creditor Trust"). I make this declaration in
3 support of the Creditor Trust's motion to sell trademarks pursuant to section 363 of the
4 Bankruptcy Code ("Motion").

5
6 2. I am over twenty-one (21) years of age and am competent to make this
7 declaration. Except as noted herein, this declaration is made upon personal knowledge.
8 All undefined capitalized terms herein have the meanings given them in the Motion.

9 3. The Creditor Trust has contacted several experts in the areas of marketing
10 and valuation of trademarks. Each of these experts quoted prices in excess of ten
11 thousand dollars (\$10,000.00) to commence an evaluation or marketing process.
12

13 4. In light of the unknown value of the Trademarks, the Creditor Trust
14 elected not to expend out-of-pocket funds in hiring an expert to value or market the
15 Trademarks.

16 5. The Creditor Trust has received only one substantial offer, in the amount
17 of ninety thousand dollars (\$90,000.00), to purchase the Trademarks. The Prospective
18 Buyer has agreed to participate in an auction sale, with other possible prospective buyers
19 solicited by advertisement in the trade journal, *American Paint and Coatings Journal*.
20 The Prospective Buyer is not an insider of the Debtors or of the Creditor Trust.
21

22 6. The Prospective Buyer's bid, and its agreement to participate in the
23 auction sale process, are contingent upon its receiving overbid protection in the amount of
24 a twenty-five percent (25%) overbid increment, plus expense reimbursement of up to
25 fifteen thousand dollars (\$15,000.00) in actual and necessary expenses, to be paid by any
26 overbidder.
27
28

7. In light of the circumstances of this case, including (a) the existence of only one known prospective purchaser which has made a substantial bid; (b) the unknown value of the Trademarks; and (c) the fact that Standard Brands has not marketed paint under the Trademarks for nearly two years, the Creditor Trust has agreed to the conditions proposed by the Prospective Buyer.

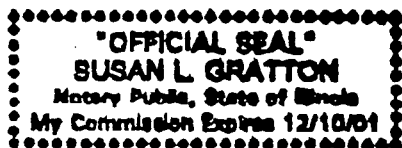
8. In light of these circumstances, the proposed auction sale procedure, together with the overbid and expense reimbursement requirements, present the best opportunity for the Creditor Trust to receive maximum value for the Trademarks.

Michael Yetnikoff

Subscribed and Sworn to before me

this ~~6th~~ day of July, 1998

Notary Public



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EXHIBIT A

TRADEMARK PURCHASE AND ASSIGNMENT AGREEMENT

Dated as of June 24, 1998

EXHIBIT

TRADEMARK PURCHASE AND ASSIGNMENT AGREEMENT

Dated as of June 24, 1998

between

THE STANDARD BRANDS LIQUIDATING CREDITOR TRUST

as Seller/Assignor

and

BEHR PROCESS CORPORATION, a California Corporation,

as Buyer/Assignor

EXHIBIT A

TRADEMARK PURCHASE AND ASSIGNMENT AGREEMENT

This Trademark Purchase and Assignment Agreement (the "Agreement") is dated this day of June, 1998 and is made by and among THE STANDARD BRANDS LIQUIDATING CREDITOR TRUST ("Seller" or "Trust") and BEHR PROCESS CORPORATION, a California corporation ("Buyer").

RECITALS

A. On or about November 26, 1996, the United States Bankruptcy Court for the Central District of California ("Court") entered an order confirming the Revised Joint and Consolidated Plan of Liquidation of the Debtor and the Official Committee of Unsecured Creditors Dated July 23, 1997 (the "Plan") in consolidated case numbers LA95-43812-KM, LA95-43813-KM and LA95-43814-KM, titled respectively In re Standard Brands Paint Co., In re Standard Brands Paint Company, and In re Major Paint Company (collectively, "Debtors").

B. The Trust was created pursuant to the Plan and The Standard Brands Liquidating Creditor Trust Agreement ("Trust Agreement").

C. Pursuant to Article V section F.1 of the Plan and section 4.1 of the Trust Agreement, all the Debtors' right, title and interest in the Trademarks (as defined below) was transferred to the Trust as of the Effective Date of the Plan.

D. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Trademarks, pursuant to the terms, covenants and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

I.

SALE AND TRANSFER OF THE TRADEMARKS

1.1 **Purchase and Sale.** On the Closing Date, Seller shall sell, transfer, convey, and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of all liens and encumbrances all Seller's right, title and interest in and to the Trademarks referenced on Schedule 1.1 attached hereto and incorporated by reference, including all corresponding trade dress or other indicia of origin, all applications for trademark registrations, and all trademark registration and any renewals thereof, and further including, without limitation, (i) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (ii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past or future infringements thereof), and (iii) all rights corresponding thereto throughout the world and all other rights of any kind accruing thereunder, together in each case with the goodwill of the

EXHIBIT A

business connected with the use of, and symbolized by all such Trademarks, associated therewith (the "Trademarks"). Buyer acknowledges that Seller does not presently maintain, nor has it ever maintained, any foreign registrations of the Trademarks. The sale of the Trademarks shall also include all licenses of such Trademarks to any person at any time wherein Seller or Seller's predecessors in interest granted rights, whether limited or unlimited, exclusive or non-exclusive, to use or exploit such Trademarks.

1.2 Assignment of Trademarks. Effective as of the Closing Date, Seller hereby assigns and transfers to Buyer, and its successors and assigns, all right, title and interest that Seller may possess in and to the Trademarks.

Seller agrees to execute all papers and documents and to perform such other proper acts as Buyer may deem necessary to secure to Buyer or to its designee the rights herein assigned.

1.3 Purchase Price. As consideration for the sale and assignment of the Trademarks, Buyer shall pay to Seller, by wire transfer, the amount of Ninety Thousand Dollars (\$90,000) on the Closing Date.

1.4 Overbid Procedure. The Seller and Buyer agree that Seller shall move the Court and properly notice all parties entitled to notice to allow for overbids at the time this Agreement is presented to the Court for approval as referenced in Section 4.2(b) hereinbelow.

Seller shall request that any competing bidder must be obligated to perform within or before the Closing Date; that any competing bid must be on the same or better terms as set forth in this Agreement; that no competing bidder may be allowed to offset against its proof of claim any amount; that competing bids must be in increments of no less than Twenty Two Thousand Five Hundred Dollars (\$22,500.00). In addition to the bid increment, all overbidders must agree to pay to Buyer a sum not to exceed Fifteen Thousand Dollars (\$15,000.00) to compensate Buyer for its actual, documented and reasonable expenses incurred in connection with this transaction.

II.

REPRESENTATIONS AND WARRANTIES BY SELLER

Seller represents and warrants to Buyer, for the benefit of Buyer, that:

2.1 Organization and Standing. The Trust is duly organized and validly existing under applicable law and is empowered pursuant to the Plan and the Trust Agreement to own and sell the Trust's interest in the Trademarks.

2.2 Prior Cessation of Business. Seller represents that Debtors ceased doing business in August, 1996, and have not marketed the Trademarks since that time. Debtors have not taken any action since at least August, 1996 to enforce or to maintain the Trademarks.

EXHIBIT A

2.3 Transfer of Trademarks. As of the Closing Date, Seller's interest in the Trademarks will be transferred free and clear of any lien or encumbrance.

To the best of its knowledge, Seller has received no notice or claim of asserted or threatened infringement of the Trademarks in or against the trade names, Trademarks, service marks, or rights of others. To the best of Seller's knowledge, no other person will own or claim ownership of any right, title and interest in and to the Trademarks. To the best of Seller's knowledge, each Trademark registration, application, extension or renewal is validly subsisting and has not been adjudicated invalid or unenforceable in whole or in part. Subject to Section 2.2 hereof, Seller is unaware of any reason for the Trademarks to become invalid or unenforceable, including unauthorized uses by third parties. To the best of Seller's knowledge, the Trademarks have not been previously licensed, assigned, transferred, sold or subjected to claims which constitute or contemplate either a present or future license, assignment, transfer or encumbrance of such Trademarks. Seller has represented to Buyer and Buyer acknowledges, that Seller has undertaken no affirmative investigation regarding the matters set forth in this paragraph.

Prior to August, 1996, the Debtors used reasonable and proper statutory notices in connection with each Trademark. Except for approval of the Court and for the filing of assignments of Trademarks with the United States Patent and Trademark Office, no approval, authorization or other action and no notice or filing with any governmental authority or regulatory body is required for the transfer of the Trademarks to Buyer in accordance with the terms hereof. Prior to cessation of its business, the Debtors took all reasonably necessary steps to use consistent standards of quality in the manufacture, distribution and sale of all products sold in connection with the Trademarks during its ownership of the Trademarks.

2.4 Accuracy of Representation. To the best knowledge of Seller, no representation, warranty, statement, or schedule furnished by Seller to Buyer in connection with the transactions contemplated hereby contains any untrue statement of any material fact or omits to state any material fact necessary in order to make the statements contained herein or therein not misleading.

2.5 Authority of Seller. The transactions contemplated by this Agreement have been duly approved by the Trustees of the Trust, and this Agreement has been, and other instruments to be delivered under this Agreement by Seller to Buyer, have been or will be duly authorized, executed and delivered on behalf of the Seller and are or will be valid, binding and enforceable agreements in accordance with their terms. The Seller has full power and lawful authority to consummate the transactions contemplated hereby on the terms and conditions set forth and no permit, consent, approval, authorization or other order of or filing with any governmental authority, except for authorization from the Court, or any other person is required in connection with such authorization, execution, delivery and consummation.

2.6 No Breach or Default. The execution, delivery and performance of this Agreement will not (i) violate any provision of the Trust Agreement, or (ii) violate any statute, rule, regulation, order or decree of any court, public body or authority of the United States or any state or municipality.

EXHIBIT A

III.

REPRESENTATIONS AND WARRANTIES BY BUYER

Buyer represents and warrants to Seller that as of the date of this Agreement and the Closing Date:

3.1 Organization and Standing. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of California.

3.2 Authority of Buyer. The transactions contemplated by this Agreement have been duly approved by the Board of Directors of Buyer, and this Agreement has been, and other instruments to be delivered under this Agreement by Buyer to Seller have been, duly authorized, executed and delivered on behalf of Buyer and are or will be valid, binding and enforceable agreements in accordance with their terms. Buyer has full power and lawful authority to consummate the transactions contemplated hereby on the terms and conditions set forth and no permit, consent, approval, authorization or other order of or filing with any governmental authority or any other person is required in connection with such authorization, execution, delivery and consummation.

3.3 No Breach or Default. The execution, delivery and performance of this Agreement will not (i) violate any provision of the Articles of Incorporation or Bylaws of Buyer, or (ii) violate any statute, rule, regulation, order or decree of any court, public body or authority of the United States or any state or public body or authority of the United States or any state or municipality.

IV.

COURT APPROVAL

4.1 Court Approval. Buyer and Seller recognize and agree that approval of the Court is necessary to consummate the sale referenced herein. If the Court declines to approve this Agreement for any reason, this Agreement shall be terminated and Buyer and Seller shall each be released from all their respective obligations hereunder.

V.

CLOSING DATE

5.1 Closing Date. The transfer of the Trademarks by Seller to Buyer shall occur within forty-eight (48) hours after entry of an order of the Court approving the sale of the Trademarks to the Buyer, this Agreement, and its Schedules and Exhibits, (the "Closing Date"), at the law offices of Lazof & Coss, 4590 MacArthur Boulevard, Suite 390, Newport Beach, California 92660, or such other time and place as the parties may agree.

5.2 Obligations of Seller. On or before the Closing Date, Seller shall deliver or cause to be delivered to Buyer:

(a) Two (2) duplicate originals of this executed Trademark Purchase and Assignment Agreement; and

(b) Such other documents, instruments, and agreements as may be reasonably required to consummate the transaction described herein and as required hereunder, including but not limited to a short form assignment of the Trademarks for filing with the United States Patent and Trademark office.

5.3 Obligations of Buyer. At the Closing Date, Buyer shall deliver or cause to be delivered to Seller:

(a) Wire transfer of the purchase price referenced hereinabove at Section 1.2;

(b) Two (2) duplicate originals of this executed Trademark Purchase and Assignment Agreement; and

(c) Such other documents, instruments and agreements as may be reasonably required to consummate the transactions described herein and as required hereunder.

VI.

EXPENSES AND TAXES

Buyer and Seller shall pay their own expenses incurred in connection with the transaction described herein, including without limitation, transfer fees, permit fees and fees and expenses of each party's legal counsel, accountants and other advisors.

VII.

SURVIVAL OF REPRESENTATIONS

All representations, warranties, and covenants in this Agreement shall be deemed and construed to be continuing representations, warranties, covenants and indemnifications which shall survive the Closing Date and the execution and delivery of all instruments and documents herein provided for and any investigation at any time made by or on behalf of Buyer.

VIII.

BROKERS

Each party to this Agreement represents and warrants to the other party that no broker or finder has acted for it in connection with this Agreement or the transactions contemplated hereby and that no broker or finder is entitled to any brokerage or finder's fee or other commission.

Each party to this Agreement agrees to defend, indemnify and hold harmless the other party hereto with respect to any claim for any brokerage or finder's fee or other commission arising out of or in any manner connected to a breach of the foregoing representations and warranties.

IX.

NOTICES

All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, given by prepaid telegram or mailed first-class, postage prepaid, registered or certified mail as follows:

If to Buyer:

BEHR PROCESS CORPORATION
Attn: Ronald C. Lazof, President and CEO
3400 West Segerstrom Ave.
Santa Ana, CA 92704

With a Copy to:

LAZOF & COSS
Attn: Barry R. Shreier
4590 MacArthur Blvd., Ste. 390
Newport Beach, CA 92660

If to Seller:

THE LORD GROUP
Attn: Ann Garreud
810 Seventh Avenue
New York, NY 10019

With a copy to:

BELL, BOYD & LOYD
Attn: Michael Yetnikoff
3 First National Plaza
70 West Madison, Ste. 3200
Chicago, IL 60602

X.

MISCELLANEOUS

10.1 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

10.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

10.3 Waiver. Waiver of any default or breach of this Agreement or of any warranty, representation, covenant or obligation contained herein shall not be construed as a waiver of any subsequent breach.

10.4 Entire Agreement. This Agreement, and the instruments referenced herein, contain the entire agreement of the parties with respect to the matters set forth herein, and supersedes any prior written or oral Agreement between them respecting the subject matter contained herein.

10.5 Amendment. This Agreement cannot be modified or amended except by a writing signed by all the parties hereto.

10.6 Cumulative Remedies. No right or remedy herein conferred on or reserved to either party is intended to be exclusive of any other remedy or right, and each and every right or remedy shall be cumulative and in addition to any right or remedy given hereunder or now or hereafter existing at law or in equity or by statute.

10.7 Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, representatives and assigns.

10.8 Assignment and Delegation. This Agreement and the rights and duties hereunder may not be assigned by any party.

10.9 Further Assurances. Whenever and so often as requested by a party, the other party will promptly execute and deliver, or cause to be executed and delivered, all such other and further and further instruments, documents or assurances, and promptly do or cause to be done all such other and further things as may be necessary and reasonably required in order to further and more fully discharge and perform the obligations and agreements hereunder, and to more fully vest in such requesting party, all rights, interests, powers, benefits, privileges and advantages conferred, or intended to be conferred, upon it by this agreement.

10.10 Form of Documents. All instruments, certificates and other documents to be executed and delivered under this Agreement by any party to any other party shall be in a form satisfactory to the counsel for the other party.

10.11 Executed Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute a single agreement.

10.12 Section Headings. The various section headings are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Agreement or any section thereof.

EXHIBIT A

10.13 Exhibits and Schedules a Part of This Agreement. The exhibits and schedules attached hereto are incorporated in this Agreement by reference and are hereby made a part hereof.

10.14 Construction of Agreement. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, no uncertainty or ambiguity shall be construed or resolved against any party under any rule of construction, including the party primarily responsible for the drafting and preparation of this Agreement.

10.15 Special Power of Attorney. As of the Closing Date, Seller hereby appoints Buyer as its attorney-in-fact with full authority in its place and stead and in its name to execute any instrument that may be necessary or appropriate to file such applications, assignments, renewals or extensions of the Trademarks as shall, from time to time, be necessary or appropriate to give effect to the intention and purpose of this Agreement in the event that Seller fails to execute and deliver any such document within a reasonable time following request.

10.16 Construction of Agreement. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa.

10.17 Bankruptcy Court Jurisdiction. The United States Bankruptcy Court for the Central District of California shall have exclusive jurisdiction over any controversy arising from or in connection with this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement in one or more counterparts which, taken together, shall constitute one Agreement.

DATED: June 27 1998

BUYER:

BEHR PROCESS CORPORATION,
a California corporation

BY:

RONALD C. LAZOF

President and Chief Executive Officer

SELLER:

STANDARD BRANDS LIQUIDATING
CREDITOR TRUST

DATED: June __, 1998

BY: _____

NAME: _____

TITLE: _____

Schedule 1.1 Trademarks

Potentially Marketable Federal Trademark Registrations of Standard Brands and Major Paint

Trademark	Status	Regis. Date	Regis. No.	Expir. Date
A-1	Renewed 7/23/92	5/30/72	0934822	5/30/02
[Rainbow Brush Design]	Renewed 2/14/95	12/31/74	1000823	12/31/04
Super-Tone	Renewed 5/10/95	6/3/75	1011992	6/3/05
Style Faire	Registered	4/28/81	1152464	4/28/01
Hide-All	Registered	6/28/83	1243352	6/28/03
New Finish	Registered	10/18/83	1254871	10/18/03
Standard Brands	Registered	3/19/85	1325283	3/19/05
Magic	Registered	11/1/88	1510591	11/1/08
Major	Registered	7/4/89	1545962	7/4/09
Rust Defender	Registered	11/1/88	1510592	11/1/08
Advantage	Registered	8/29/89	1553392	8/29/09
[Human Paint Can Design]		9/10/91	1656883	9/10/01
Standard Brands	Registered	12/1/92	1735892	12/1/02
Standard Brands	Registered	8/24/93	1789106	8/24/03
M	Registered	11/16/93	1804011	11/16/03
[Radiant Brush Design]	Registered	5/10/94	1835075	5/10/04
Contractors Choice	Registered	9/27/94	1855455	9/27/04
Standard Brands Windsor 21	Registered	2/28/95	1881084	2/28/05
Cycle II	Registered	2/15/94	1820909	2/15/04
Wall of Another Color	Registered	6/6/95	1897922	6/6/05
Neat and Clean	Registered	3/7/95	1881743	3/7/05
Kiddo the Toughest Paint ...	Registered	3/14/95	1884174	3/14/05
Decade	Registered	4/23/96	1969104	4/23/06
Professional Pride	Registered	3/5/96	1960748	3/5/06
Kiddo	Registered	8/24/95	1929284	8/24/05
Contractor's Grade A	Registered	5/23/95	1895689	5/23/05
Contempo	Registered	4/18/95	1889545	4/18/05
[Design]	Registered	9/3/96	1998288	9/3/06
Cubremax	Registered	9/24/96	2002937	9/24/06
Durapaint	Registered	10/15/96	2008397	10/15/06
Gallerie	Opposition pend'g			

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EXHIBIT B

**ORDER AND NOTICE OF SALE
OF TRADEMARKS OF STANDARD BRANDS
PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE**

EXHIBIT

1 DAVID F. HEROY (Illinois Bar No. 1199617)
2 MICHAEL YETNIKOFF (Illinois Bar No. 6198364)
3 BELL, BOYD & LLOYD
4 Three First National Plaza
5 70 West Madison Street, Suite 3300
6 Chicago, Illinois 60602
7 Telephone Number (312) 807-4244
8 Facsimile Number (312) 372-2098

9 JOSEPH A. EISENBERG P.C. (Bar No. 52346)
10 DAVID B. GOLUBCHIK (Bar No. 185520)
11 JEFFER, MANGELS, BUTLER & MARMARO LLP
12 2121 Avenue of the Stars, Tenth Floor
13 Los Angeles, California 90067
14 Telephone Number (310) 203-8080
15 Facsimile Number (310) 203-0567

16 Co-Counsel for
17 The Standard Brands Liquidating Creditor Trust

18 **UNITED STATES BANKRUPTCY COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**
20 **LOS ANGELES DIVISION**

21 In re

22 STANDARD BRANDS PAINT CO.,
23 a California corporation,
24 STANDARD BRANDS PAINT COMPANY,
25 a Delaware corporation,
26 MAJOR PAINT COMPANY,
27 a California corporation,

28 Debtors.

) Case No. LA 95-43812-KM
) Chapter 11
) (Jointly Administered and
) Substantively Consolidated with
) Case Nos. LA 95-43813-KM and
) LA 95-43814-KM)
)
)
) **ORDER AND NOTICE OF SALE**
) **OF TRADEMARKS FREE AND**
) **CLEAR OF LIENS, CLAIMS AND**
) **OTHER INTERESTS**

29 This matter coming before the Court on the Motion of the Standard Brands
30 Liquidating Creditor Trust ("Creditor Trust") for Entry of Order Pursuant to Section 363 of the
31 Bankruptcy Code Authorizing Sale of Trademarks Free and Clear of Liens, Claims and Other
32 Interests ("Motion"); proper notice having been provided all parties so entitled; this Court having
33 reviewed the Motion and Exhibits thereto and the Declaration in support thereof, the Court

EXHIBIT A

1 having held a hearing on this matter and considered the representations of counsel at that hearing;
2 and the Motion appearing to be in the best interests of the estate and of creditors;

3 THIS COURT HEREBY ORDERS THAT

4 1 The Motion is granted

5
6 2 On _____, at _____, an in-court sale (the "Sale") will be
7 held whereby the Creditor Trust's interest in the Trademarks (as defined in the Motion) shall be
8 sold to the Prospective Buyer (as defined in the Motion), on the terms set forth in the Sale
9 Agreement annexed as Exhibit A to the Motion, or to any higher bidder that meets the
10 requirements set forth in the Motion.
11

12 3. In order to bid at the sale, a potential bidder must have submitted to
13 counsel for the Creditor Trust no later than 48 hours before the Sale, (a) a written cash bid of not
14 less than 25% over the Prospective Buyer's \$90,000.00 offer to purchase all the Trademarks (a
15 total of \$112,500.00), plus provision for up to \$15,000.00 in reimbursement of actual and
16 reasonable expenses to the Prospective Buyer, pursuant to adequate evidence submitted by the
17 Prospective Buyer, and (b) a 10% of the Overbid Amount, or \$11,250.00, bid deposit by cashier's
18 or certified check, payable to the Standard Brands Creditor Trust. Any bid must be on the terms
19 set forth in the Sale Agreement annexed as Exhibit A to the Motion.
20
21

22 4. At the Sale, the Creditor Trust's interest in the Trademarks shall be sold
23 free and clear of all other liens, claims and other interests, pursuant to section 363 of the
24 Bankruptcy Code.
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26 5. Any prospective bidder may obtain a copy of the Motion by submitting a
27 written request to counsel for the Creditor Trust.
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6. The Creditor Trust is authorized and directed to place this Order and
Notice of Sale in the *American Paint and Coatings Journal*.

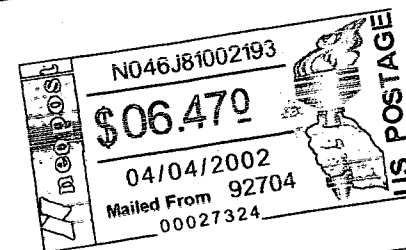
DATED: _____

KATHLEEN MARCH
UNITED STATES BANKRUPTCY JUDGE



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APR 10 2002



BEHR 

A Masco Company

BEHR PROCESS CORPORATION

P.O. BOX 1287, 92702

3400 W. SEGERSTROM, 92704

SANTA ANA, CALIFORNIA

SHIP TO •

Steven Arbaugh
Civil Investigator, SFD-7-B
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

RECEIVED
APR 10 2002